

TITLE 14 DEPARTMENT OF PARKS AND RECREATION

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN the Department of Parks and Recreation (Department) proposes to amend the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Department proposes to amend the regulations and documents incorporated by reference in the California Code of Regulations (CCR), Title 14, Division 3, Chapter 15, Articles 1 through 5, Sections 4970.00 through 4970.26 pertaining to the Off-Highway Motor Vehicle Recreation (OHMVR) Grants and Cooperative Agreements Program (Program).

PUBLIC HEARING

The Department has scheduled one public hearing on the proposed rulemaking. The hearing will be held in Sacramento on September 20, 2011. The meeting will commence at 3:00 p.m. and will end no earlier than 6:00 p.m.

The location of the hearing is:

Off-Highway Motor Vehicle Recreation Division Headquarters
1725 23rd Street, Suite 200
Sacramento, CA 95816
(916) 324-4442

At the hearing, any interested person, or his or her authorized representative, may present oral or written statements, arguments, or contentions relevant to the proposed action described in the Informative Digest. The Department may impose reasonable limits on oral presentations. The Department requests, but does not require, persons making oral comments at the hearings also submit a written copy of their testimony at the conclusion of their remarks. Additionally, pursuant to Government Code Section 11125.1, any information presented to the Department during the open hearings in connection with the matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Department and shall be made available upon request.

Written comments other than those presented at the public hearing may be submitted to the Department as described below.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relative to the proposed rulemaking to the Department. The written comment period ends at 5:00 p.m., on September 20, 2011. The Department will consider only written comments received at the Department's office by that time (in addition to those comments received at the public hearing). Written comments may be mailed to the following address:

Department of Parks and Recreation
Off-Highway Motor Vehicle Recreation Division
Attn: Sixto Fernandez, Grants Manager
Grants and Cooperative Agreements
1725 23rd Street, Suite 200
Sacramento, California 95816-7100

Written comments of not more than 10 pages will be accepted by the Department via facsimile at (916) 324-1610. A fax transmission must be completed by the deadline given above.

Written comments delivered by email will also be accepted by the Department. Written comments of not more than 10 pages may be submitted to the Department at the following address: OHVInfo@parks.ca.gov. Electronic mail must be completed by the deadline given above.

AUTHORITY AND REFERENCE

Authority Citation: The proposed amendments are authorized by Public Resources Code (PRC) Sections 5001.5 and 5003.

Reference Citation: The particular code sections implemented, interpreted, or made specific by these proposed amendments are PRC Sections 5090.32 and 5090.50.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

Background and History

Public Resources Code Section 5090.01 et seq., also known as the Off-Highway Motor Vehicle Recreation Act of 2003 (Act), as amended, governs off-highway motor vehicle (OHV) grants and cooperative agreements with cities, counties, districts, federal agencies, federally recognized Native American tribes, nonprofit organizations, educational institutions, and State agencies. The Grants and Cooperative Agreements Program is administered by the OHMVR Division within the Department. The Program allows the State to assist eligible agencies and organizations to develop, maintain, expand and manage high-quality OHV recreation areas, roads, trails, and other facilities, while responsibly maintaining the wildlife, soils, and habitat in a manner that

will sustain long-term OHV recreation. Assistance is provided in the form of project-specific grant funding.

The Department adopted permanent regulations for the Grants and Cooperative Agreements Program, which appear in the California Code of Regulations, Title 14, Division 3, Chapter 15, Sections 4970.00 – 4970.26.

With the conclusion of the 2010/11 grants cycle, the OHMVR Division identified areas in the regulations needing additional clarity or revision. The Department proposes to amend portions of CCR Title 14, Division 3, Chapter 15, Sections 4970.00 – 4970.26 and documents incorporated by reference. These amendments will clarify aspects of the Program, improve oversight, and revise project evaluation criteria to obtain more effective and relevant information for scoring the projects.

Effect of Proposed Rulemaking

The Department is proposing to amend the OHMVR Grants and Cooperative Agreements Program Regulations, CCR Title 14, Division 3, Chapter 15, Articles 1 through 4, Sections 4970.00 – 4970.26 and documents incorporated by reference as follows:

Section 4970.00 is amended to update the applicable date of the regulations.

Section 4970.01 is amended to define a new term.

Section 4970.03 is amended to correct grammar.

Section 4970.04 is amended to identify the application deadline.

Section 4970.05 is amended to ensure consistency between the regulations and a document incorporated by reference regarding public notification efforts. The Section is also amended to specify acceptable documentation required of educational institutions and nonprofit organizations.

Section 4970.06.1 is amended to ensure consistency in the Section, remove unnecessary capitalization, and to explain what types of environmental compliance documentation may be submitted by applicants subject to the National Environmental Policy Act (NEPA) and when it must be submitted.

Section 4970.07 is amended to clarify the purpose of comments submitted by OHMVR Division to applicants.

Section 4970.07.2 is amended to clarify the ability of the OHMVR Division to eliminate or reduce costs or activities in applications.

Section 4970.08 is amended to expand the list of media items considered as eligible project costs and places restrictions if these items intend to display the OHV trust fund logo.

Section 4970.10.1 is amended to ensure consistency throughout the regulations.

Section 4970.10.2 is amended to ensure consistency throughout the regulations.

Section 4970.10.3 is amended to ensure consistency throughout the regulations.

Section 4970.10.4 is amended to ensure consistency throughout the regulations.

Section 4970.11 is amended to ensure consistency throughout the regulations and to identify additional information needed for restoration project applications.

Section 4970.13 is amended to ensure consistency throughout the regulations.

Section 4970.19 is amended to ensure the OHVMR Division does not execute project agreements for applicants that owe the State money from previous projects or applicants that have not closed out existing projects in a timely manner.

Section 4970.19.1 is amended to specify the timeframe in which a project performance period must begin.

Section 4970.23.1 is amended to require additional information from grantees when requesting advance payments.

Section 4970.23.2 is amended to require additional information from grantees when requesting reimbursement.

Section 4970.24 is amended to require additional information from grantees closing out a project.

Section 4970.24.2 is added to explain a project performance review conducted by OHMVR Division staff.

Subarticle 1 is amended to reduce confusion about audits and remove unnecessary language.

Section 4970.25.2 is amended to reduce confusion about audits, remove unnecessary language, and describe interaction between the OHMVR Division and the Audits Office and to maintain consistent numbering in the regulations.

Section 4970.25.3 is amended to maintain consistent numbering in the regulations.

Documents Incorporated by Reference

Public Review Process is amended to be consistent with Section 4970.05(e)(2).

Soil Conservation Plan (12/11) is added to identify projects that must supply a Soil Conservation Plan.

Evaluation Criteria - General Criteria (Rev. 1/11) is amended to revise scoring criteria.

Evaluation Criteria – Education and Safety Criteria (Rev. 1/11) is amended to revise specific scoring criteria.

Evaluation Criteria – Restoration Project Criteria (Rev. 1/11) is amended to revise specific scoring criteria.

COMPARABLE FEDERAL REGULATION OR STATUTE

The proposed amendments do not duplicate or conflict with federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Department has determined these proposed regulation amendments do not impose a mandate on local agencies or school districts. Participation in the OHMVR Grants and Cooperative Agreements Program is voluntary.

DISCLOSURES/ESTIMATE OF ECONOMIC AND FISCAL IMPACT

Fiscal Impact on Local Agencies or School Districts: These regulations do not impose any cost on a local agency or school district requiring reimbursement under Part 7 (commencing with Section 17500) of Division 4, Government Code, nor do they impose any nondiscretionary cost or savings on local agencies.

Fiscal Impact on State Government: These regulations do not impose any cost or savings to the State or any cost or savings in federal funding to the State.

Economic Impact on Business: The Department has made an initial determination these regulations do not have a significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

Cost Impacts on Representative Private Persons or Businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment of Effect on Jobs and Businesses: Adoption of these regulations will not: 1) create or eliminate jobs within California, 2) create new businesses or eliminate existing businesses within California, or 3) affect the expansion of businesses currently doing business within California.

Impact on Housing: These regulations would not have a significant effect on housing costs.

Determination Regarding Effect on Small Businesses: The Department has determined there are no cost impacts on small businesses because this is a grant program for federal agencies, federally recognized Native American tribes, cities, counties, districts, State agencies, nonprofit organizations, and educational institutions.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the Department has determined no reasonable alternative it considered or has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries concerning the proposed action may be directed to Sixto Fernandez, Grants Manager, at (916) 324-1572 or email at sfernandez@parks.ca.gov.

The back-up contact person regarding the proposed action is Kelly Long, Grants Administrator, at (916) 324-3741 or e-mail at kclong@parks.ca.gov.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared an Initial Statement of Reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action. Copies may be obtained by contacting Sixto Fernandez at the e-mail address listed previously. The rulemaking file, which contains all information on which the proposal is based, is located at the OHMVR Division, 1725 23rd Street, Suite 200, Sacramento, California, 95816-7100, and may be obtained upon request. Additionally, the Initial Statement of Reasons and the text of the proposed regulations and documents incorporated by reference may be obtained from the Department's website located at www.ohv.parks.ca.gov at the Grants link.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After any public hearings and consideration of all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes substantive modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, a copy of the Final Statement of Reasons may be obtained by contacting Sixto Fernandez at the aforementioned address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of Notice of Proposed Rulemaking, the Initial Statement of Reasons and the text of the regulations will be available through the Division website at www.ohv.parks.ca.gov, under the Grants link.